

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

Allen et al.,

Plaintiffs,

v.

**CIVIL ACTION
NO. 05-40048**

Martin Surfacing, Inc. et al.,

Defendants.

SCHEDULING ORDER

SAYLOR, J.

This Scheduling Order is intended to provide a reasonable timetable for discovery and motion practice in order to help ensure a fair and just resolution of certain preliminary matters without undue expense or delay.

In light of the substantial uncertainty as to the proper defendant(s) to this litigation and its relative complexity, discovery and motion practice in this litigation shall proceed in phases. *See* Fed. R. Civ. P. 16; Local Rule 16.1(E).

The first phase shall involve discovery and motion practice concerning issues of jurisdiction and the identity of the appropriate defendants in this litigation. This includes discovery related to the following issues: (1) any issue concerning personal or subject matter jurisdiction; (2) any issue of successor liability, whether by asset sale or otherwise; (3) whether plaintiffs can proceed against the named individual defendants based on their ownership of, or interest in, an organizational entity, or under any other theory of liability; (4) whether plaintiffs can proceed against one or more defendants on a theory of “piercing the corporate veil”; (5) the impact of any Bankruptcy Court proceedings on this action, including, but not limited to, any automatic stay; and (6) any other issue concerning the determination of the proper parties to this action.

Discovery and motion practice as to the merits of the claims, damages, and any other remaining issues shall occur in a later phase. Pending further order of the Court, the scope of any further discovery will be determined at the status conference on March 8, 2006.

Timetable for First Phase of Discovery and Motion Practice

Pursuant to Rule 16(b) of the Federal Rules of Civil Procedure and Local Rule 16.1(F), it is hereby ORDERED that, during the first phase of discovery and motions practice:

1. **Amendments to Pleadings.** Except for good cause shown, no motions seeking leave to add new parties or to amend the pleadings to assert new claims or defenses may be filed after January 13, 2006.
2. **Discovery as to Phase One.**
 - a. All requests for production of documents and interrogatories must be served by November 23, 2005.
 - b. All requests for admission must be served by November 23, 2005.
 - c. All depositions, other than expert depositions, must be completed by December 23, 2005.
3. **Status Conference.** A status conference will be held on March 8, 2006 at 3:00PM.
4. **Motions as to phase one.**
 - a. Motions, such as motions for summary judgment or partial summary judgment and motions for judgment on the pleadings, must be filed by January 13, 2006.
 - b. Oppositions to motions and any reply or sur-reply shall be subject to the time periods set forth in the Federal Rules of Civil Procedure.
5. **Procedure for Seeking Extensions from Court.** Motions to extend or modify deadlines will be granted only for good cause shown. All motions to extend shall contain a brief statement of the reasons for the request; a summary of the discovery, if any, that remains to be taken; and a specific date when the requesting party expects to complete the additional discovery, join other parties, amend the pleadings, or file a motion.
6. **Motions to Compel or Prevent Discovery.** The parties are encouraged to resolve any discovery disputes during the first phase between themselves if possible. Except for good cause shown, motions to compel discovery, motions for protective orders, motions to quash, motions to strike discovery responses, and similar motions must be filed no later than the close of the first phase of discovery. If additional discovery is compelled by the court after the relevant deadline has passed, the court may enter such additional orders relating to discovery as may be appropriate.

7. **Reply Memoranda.** Parties need not seek leave of court to file a reply memorandum in response to an opposition to any motion, provided that such a reply memorandum does not exceed twelve pages, double-spaced, and is filed within seven days (excluding intermediate Saturdays, Sundays, and legal holidays) after service of the opposition memorandum. Parties may otherwise file reply or surreply memoranda only with leave of court. When such leave is sought, the moving party may file a proposed reply or surreply memorandum with the motion for leave.
8. **Additional Conferences.** Upon request of counsel, or at the court's own initiative, additional case-management or status conferences may be scheduled. Parties may request telephonic conferences where appropriate to avoid undue inconvenience or expense.
9. **Early Resolution of Issues.** The court recognizes that, in some cases, resolution of one or more preliminary issues may remove a significant impediment to settlement or otherwise expedite resolution of the case. Counsel are encouraged to identify any such issues and to make appropriate motions at an early stage in the litigation.

By the Court,

9/19/05

Date

/s/ Martin Castles
Deputy Clerk